

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.14628 OF 2007

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ORAL ORDER:

This writ petition is filed seeking a declaration that the action of the respondent-LIC Housing Finance Limited in allegedly seeking to recover the amount due under loan Account No.64042754 without following due process of law as arbitrary and illegal.

The petitioner has not disputed the fact that she had availed a house loan from the respondent for purchase of Flat No.502 in Sri Srinivasa Nivas, situated in Survey No.191, SBH Officers' Colony, Saidabad, Hyderabad. It is not in dispute that she had committed default in payment of instalments payable under the loan account.

However, it is alleged that the respondent without issuing any notice and without taking recourse to any Statute has been attempting to dispossess the petitioner from the Flat in question. The petitioner states that all of a sudden, a letter dated 30-6-2007 signed by the Advocate Commissioner said to have been appointed by the Chief Metropolitan Magistrate, Hyderabad was affixed to her house calling upon her to deliver vacant possession of the property on or before 8.7.2007. It is contended that the letter did not disclose any particulars either the number or the date of the order under which the Advocate-Commissioner was appointed by the Chief Metropolitan Magistrate for taking delivery of physical possession of the property. When contacted, the said Advocate-Commissioner refused to furnish the details. Hence this writ petition.

As noted above, the petitioner does not dispute the fact that she has availed the loan from the respondent by mortgaging the property in question in favour of the respondent as security. A mere perusal of the letter dated 30.6.2007 addressed by the Advocate-Commissioner shows that the Advocate Commissioner was appointed by the Chief Metropolitan Magistrate, Hyderabad under Section 14 of the

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Act") to assist the respondent, who is the secured creditor in taking possession of the Flat in question which is a secured asset. As a matter of fact, the averments in para-8 of the petitioner's affidavit, filed in support of the writ petition itself shows that the petitioner was aware of the fact that the notice dated 30.6.2007 was issued under the provisions of the Act. The only grievance of the petitioner appears to be that the respondent failed to issue notice under Section 13(2) and 13(4) of the Act, which are mandatory before taking steps under Section 14 of the Act.

If that be so, it is for the petitioner to work out the remedy provided under Section 17 of the Act before the Debts Recovery Tribunal having jurisdiction in the matter so that after conducting necessary enquiry, the Debts Recovery Tribunal will record a finding whether the steps taken by the respondent for enforcement of the security are in accordance with the Act and the Rules made thereunder and pass appropriate orders in accordance with law.

In the light of the said efficacious alternative remedy available under the Act, the petitioner cannot straight away maintain this writ petition under Article 226 of the Constitution of India.

Accordingly, granting leave and liberty to the petitioner to work out the alternative remedy, if so advised, the writ petition is disposed of. No costs.

10.7.2007.

Mrb/Kgr

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.14628 OF 2007

10th July, 2007.

Between:

G. Lalitha.

.. Petitioner.

And

L.I.C. Housing Finance Limited,
represented by its Area Manager,
HUDA, Maitrivanam,
Ameerpet,
Hyderabad.

.. Respondent.